

#294-13 (OAL Decision: Not yet available online)

MELISSA MILLER, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

GLOUCESTER COUNTY INSTITUTE :
FOR TECHNOLOGY, GLOUCESTER :
COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – a tenured math teacher employed in respondent’s school district – filed an appeal on January 19, 2012 of performance evaluations conducted in March 2011 and November 2011, contending that the actions of the Board and its administrative staff in regard to these evaluations were arbitrary, capricious and contrary to the law. Petitioner further alleged that she suffered anxiety, depression and insomnia as a result of the Board’s actions, which necessitated the use of her sick days. Petitioner sought, *inter alia*, to prohibit specific board employees from evaluating her, and to restore all sick days used following the alleged 2011 incidents. The Board filed a motion to dismiss the petition as untimely pursuant to *N.J.A.C.* 6A:3-1.1(i).

The ALJ found, *inter alia*, that: those incidents alleged in the petition which occurred before October 21, 2011 are time-barred under *N.J.A.C.* 6A:3-1.1(i); petitioner’s contention that the November 1, 2011 evaluation was the culmination of arbitrary and capricious actions on the part of the Board and its administrative staff – and on that basis, all incidents alleged in the petition complied with the 90-day rule – is without merit; there is no compelling reason to relax the requirements of *N.J.A.C.* 6A:3-1.1(i); petitioner failed to provide any factual basis for her conclusion that her 2011 evaluations were arbitrary, capricious, and contrary to the law; and her allegations fail to show that the respondent or any of its administrators violated any of the provisions of *N.J.A.C.* 6A:32-4.4. Accordingly, the ALJ granted the Board’s motion to dismiss the petition.

Upon independent review and consideration, the Commissioner was constrained to conclude that he lacks the jurisdiction to provide the relief sought by the petitioner, as the subject matter of her allegations would appropriately be pursued as a grievance in accordance with the collective bargaining agreement between respondent and petitioner’s union. Accordingly, the Commissioner granted respondent’s motion to dismiss the petition.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

August 16, 2013

OAL DKT. NO. EDU 2531-12
AGENCY DKT. NO. 13-1/12

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Before the Commissioner is a controversy stemming from petitioner's receipt of an evaluation which yielded significantly lower ratings than her preceding evaluations. The facts recited in the verified petition call into question the impartiality of the supervisory personnel who conducted that assessment and subsequent evaluations. Upon review of the record, the Initial Decision of the Office of Administrative Law (OAL), the petitioner's exceptions thereto, and respondent's reply, the Commissioner is constrained to conclude that he lacks the jurisdiction to provide the relief which petitioner seeks.

Procedurally, this case was litigated by way of a motion to dismiss the petition, which motion respondent filed in lieu of an answer. The Commissioner concurs with the Administrative Law Judge (ALJ) that adjudication of alleged infractions which occurred prior to October 21, 2011 is barred by the 90-day limitations period set forth in *N.J.A.C.* 6A: 3-1.3(i). However, the Commissioner also notes that an assessment of the propriety of the November 1, 2011 observation of petitioner by principal Gina Mateka (Mateka) and the resulting

November 5, 2011 evaluation could properly include – for context – the consideration of Mateka’s prior behavior toward petitioner.

Further, while the Commissioner concurs with the ALJ that the petition does not appear to articulate an express violation of *N.J.A.C* 6A:32-4.4 (since repealed), he does not agree that petitioner alleged “no facts to support her contention that the evaluations conducted as to her were arbitrary and capricious.” (Initial Decision at 7) Rather, the Commissioner finds, after carefully reviewing the verified petition, that fact-finding concerning the seemingly abrupt change in petitioner’s evaluations and the reasons for the apparent tensions between petitioner and her supervisors would have been warranted in order to ascertain whether the evaluations of petitioner were fair and reasonable. Such an inquiry, however, does not fall under the Commissioner’s jurisdiction. Rather, it is appropriately pursued as a grievance, in accordance with the collective bargaining agreement between respondent and petitioner’s union. Nor does the Commissioner have jurisdiction over claims that the actions of respondent’s employees caused petitioner injury or harm.

Accordingly, and for the reasons expressed above, the Commissioner grants respondent’s motion to dismiss the petition

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: August 16, 2013

Date of Mailing: August 16, 2013

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).